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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/693,154 | 10/23/2003 | Niels Diffrient | 0007049 | 1662 |
| 826 | 7590 | 10/04/2005 | EXAMINER | |
| ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000 | | | BARFIELD, ANTHONY DERRELL | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3636 | |

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/693,154

Applicant(s)

DIFFRIENT, NIELS

Examiner

Anthony D. Barfield

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 4 and 8, there is inconsistency between the preamble and portions in the body of the claims as the applicant has disclosed an adjustable arm for an office chair in the preamble and then positively recites the chair including portions thereof in the body of the claims. Applicant must clarify what the claimed are intended to be drawn to i.e., the adjustable arm or the combination of the adjustable arm and office chair.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an

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international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Doerner et al. Doerner et al shows the use of a bracket (30) adapted to be attached to an armrest support arm (24); a vertical pivot axis (80) attached to the bracket; an armrest support (70) rotatably attached to the vertical pivot axis; and a mechanism (38,39,52) for securing the armrest in a fixed position in the horizontal plane.

5. Claims 4-9 and 14 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Swenson. In regards to claims 4-9, the examiner interpreted the claims only in regards to the subcombination of an adjustable armrest. Swenson shows the use of a support (16) for a back of a chair connected to a base of the chair; a bracket (18) mounted on the back support; a first link (500) pivotally mounted to the bracket mounted on the back support; a second link (502) pivotally mounted to the bracket mounted on the back support; a second bracket (504) pivotally mounted to distal ends of the first and second links, with an armrest body (30) thereon. The armrest body maintains an orientation substantially parallel to a seat when its not being pivoted to a non-use position. A locking mechanism (73) comprises a slider-crank at the interface between one of the links and mounted to the bracket mounted on the back support and second bracket.

6. Claims 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Zegeer. Zegeer shows the use of a moveable armrest comprising a bracket (41) adapted to be attached to an armrest support arm (55) along with a horizontal pivot axis attached thereto (see Fig. 11). An

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armrest support (40) is rotatably attached to the horizontal pivotal axis whereby a mechanism (85,87) secures the armrest in a position in the horizontal plane (see Figs 10 and 11). The bracket inherently can be attached at least 6 inches above the seat of a chair as it is height adjustable along a back.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-3,11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swenson et al. Swenson shows all of the teachings of the claimed invention except the bracket being at least 6 inches above a rear portion of the seat of the chair. Swenson shows a portion of the bracket above a rear portion of the seat (Fig. 1). It would have been an obvious matter of design choice to modify the bracket in order that its 6 inches above the rear portion of the seat of the chair, since applicant has not disclosed any criticality in having a bracket 6 inches above a rear portion of the seat of chair, and it appears that the bracket as taught by Swenson, would perform equally well. The method steps as recited would have been incorporated within the use of the invention as taught by Swenson et al.

9. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swenson et al in view of Wilkerson. Swenson et al. shows all of the teachings of the claimed invention except the use of a pedestal with a plurality of arms. Wilkerson shows the conventional use of a

pedestal with a plurality of legs. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the pedestal of Swenson et al, with the plurality of arms, as taught by Wilkerson in order to provide additional stability to the chair.

10. Claims 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zegeer. The method steps as recited would have been incorporated within the use of the invention as taught by Zegeer.

Response to Arguments

11. Applicant's arguments with respect to claims 1,4,10,14 have been considered but are moot in view of the new ground(s) of rejection.

12. Applicant's arguments filed 6/21/05 have been fully considered but they are not persuasive. In response to applicant's argument that Swenson has been misconstrued by the examiner in regards to claim, 4. The examiner is of the opinion that in fact Swenson does anticipate the claimed invention of claim 4 so far as defined. Applicant should note that the backrest assembly (16) of Swenson constitutes a support (35) for a back of a chair. Furthermore a bracket (18) is connected thereto via the cushion or other means. It is noted that the features upon which applicant relies (i.e., rigid back support along with a cushion) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In regards to applicant's argument of claim 8, the examiner maintains the position that the back support (16) of Swenson anticipates the claimed invention so far as defined. Applicant has merely stated a "back support" which could inherently be

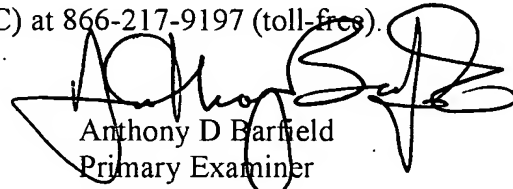
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interpreted as a back support for an occupant. Furthermore, in response to applicant's argument that the characterization of Swenson is wrong as Swenson intentions are different as recited in the specification thereof, a recitation of the intended use of the claimed invention must result in a **structural difference** between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of **performing the intended use, then it meets the claim**. The examiner is of the opinion that the "adjustment knob" of Swenson constitutes a "slider-crank" so far as defined by the claimed invention, as the knob is cranked (or turned) which allows a sliding motion of the locking mechanism. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D. Barfield whose telephone number is 703-308-2158. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony D Barfield
Primary Examiner
Art Unit 3636

adb
September 2, 2005